

**To:** Tom Hagler/R9/USEPA/US@EPA[]  
**From:** "Richard Denton"  
**Sent:** Mon 7/16/2012 11:08:29 PM  
**Subject:** Delta Stewardship Council and water quality policy  
[CCWD Letter to DSC wq authority 06-27-12.pdf](#)  
[Farm Bureau 062912 comments re focus of policies.pdf](#)  
[PCFFA 062912 salmon goals plus WQ policy.pdf](#)  
[SRCSD 070312 re WQ policy.pdf](#)  
[CCWD Letter to DSC wq authority 06-27-12.pdf.001](#)  
[CCWD Sixth Draft Comments June 2012.pdf](#)  
<http://www.mtdemocrat.com/news/delta-stewardship-council-hears-from-environmental-protection-agency/>  
<http://dsc.videosscc.com/archives/062812/>  
<http://dsc.videosscc.com/archives/062812/>  
<http://dsc.videosscc.com/archives/061412/>  
<http://dsc.videosscc.com/archives/042612/>

Tom,

I hope all is well with you.

I saw the following article about your recent visit to the Delta Stewardship Council and wondered whether you were following the DSC's development of their Delta Plan with respect to water quality.

<http://www.mtdemocrat.com/news/delta-stewardship-council-hears-from-environmental-protection-agency/>

I attended the June 14 DSC meeting for CCWD and made public comments regarding the lack of any water quality policies. Despite a subsequent follow up letter and legal opinion by CCWD and two comments letters from Cal. Farm Bureau and PCFFA criticizing the lack of any water quality policies, it looks like the DSC will adopt a Delta Plan that fails to respond to their Delta Reform Act requirement to adopt measures to ensure improved Delta water quality.

It would probably be difficult for a federal agency, USEPA, to tell a state agency, the DSC, that they are not complying with state law. However, I thought you might appreciate a heads up on this, if you are not already aware of the issue.

Attached are two letters Contra Costa Water District sent to the Delta Stewardship Council requesting the Delta Plan contain at least one Water Quality Policy. On April 26, 2012, the DSC decided the SWRCB and Regional Boards are doing a great job and they felt they could not add any further value. However, as outlined in CCWD's June 27, 2012 letter, the Delta Reform Act legislation specifically requires the DSC to set measures to ensure improved water quality in the Delta.

Also attached are two subsequent comment letters to DSC supporting the need for WQ policies (California Farm Bureau Federation and the Pacific Coast Federation of Fishermen's Associations) and one opposing (Sacramento Regional County Sanitation District)

The DSC members and the staff are both passing the buck on this one. Chair Isenberg said at the June 28

meeting he won't reopen without a recommendation from staff and Joe Grindstaff said they had discussed in detail about 2 months ago (April 26) and won't do anything until asked to by a Council member.

Unfortunately, there appears to be no supporting votes on the Delta Stewardship Council for a water quality policy. Don Nottoli because of his association with Sac Regional would likely oppose. The representatives of the exporters will of course oppose. Even Patrick Johnston apparently opposes. Felicia Marcus has now gone to serve on the SWRCB. She might have been supportive but it is too late now.

The Bay-Delta Conservation Plan is scheduled to come out with an inadequate Draft EIR in September and the DSC's adoption of their Delta Plan is imminent (after they finalize their Delta Plan EIR). The BDCP currently say there are unavoidable water quality impacts (the complete reverse of improving water quality – also bad for fish) and the Delta Plan, without any water quality policies, and only toothless water quality recommendations, will say no problem.

The following are links to the various public comments on this topic at recent DSC meetings (going back in time: June 28, June 14 and April 26).

Richard

(510) 339-3618

Marguerite Naillon public comments on behalf of CCWD on June 28

<http://dsc.videosscc.com/archives/062812/>

Marguerite spoke about 5:20 pm. Segment 41 of 81.

<http://dsc.videosscc.com/archives/062812/>

Linda Dorn (Sac Regional) later spoke later in opposition the same day (Segment 43 of 81).

Richard Denton public comments on behalf on CCWD on June 15

Agenda Item 13, Index 8

Archive Segment Number 50 of 55

<http://dsc.videosscc.com/archives/061412/>

Chair Phil Isenberg asked for CCWD to come up with a Legal Opinion on the DSC's authority to set water quality policy – which CCWD did (see attached letter).

Joe Grindstaff said they had discussed it for several hours in the past (April 26) and the Council had voted to go with resolutions rather than a policy, so he considered the issue closed.

Delta Stewardship Council discussion on Water Quality Policy WQ P1 on April 26

<http://dsc.videosscc.com/archives/042612/>  
April 26, 2012 meeting Item 8

The first video segment starting about 9 minutes in starts with a discussion of WQ P1. Dan Ray is discussing it initially.

From the DSC minutes for April 26, 2012

b. Update on Development of Final Staff Draft Delta Plan

Ms. Messer presented the Update on the Development of the Final Staff Draft Delta Plan. She stated that major tasks underway include developing a robust and integrated story for the plan in Chapter 1 and taking a good look at the chapters and restructuring them and reorganizing sections of the plan for better flow. Ms. Messer also noted the numbering for some of the policies and recommendations had changed due to the rearrangement of chapters.

c. Review of Policies and Recommendations

Following Ms. Messer's update on the Final Staff Draft Delta Plan development, working from Item 8c Attachment 1, Proposed Alternatives for Policies and Recommendations for the Draft Delta Plan, Dan Ray described the proposed language for the final Delta Plan beginning with Water Quality in the Delta (WQ P1). Ms. Davis joined Mr. Ray and Ms. Messer for the update on WR R3, Compliance with Reasonable and Beneficial Use. Mr. Ray, Ms. Messer and Ms. Davis heard Council members' remarks, answered questions and provided clarification. Public Comment was heard after each key topic discussion.

Public Comment WQ P1 – Water Quality in the Delta:

Joone Lopez, Calaveras County Water District, gave her perspective of dealing with the Regional Water Quality Control Board and the District's permitting experience and the difficulty with the permitting process. Ms. Lopez commented on the difficulty of keeping up with the stringent requirements with limited funding. She stated that infrastructure improvements must sometimes be deferred because of trying to keep up with the requirements and the regulatory fines. Ms. Lopez stated maintaining water quality was something they could support but that the District couldn't support adding more process or review. She said it would be overly stringing and cause problems with funding that is not available.

Mark Rentz, Association of California Water Agencies, requested clarification about determining "significant"

negative water quality impacts. Mr. Rentz stated he assumed the responsibility sat with the project proponent but asked when it would be determined that the negative water quality impacts had become significant. Mr. Rentz stated that the Regional Water Quality Control Board and the State Water Resources Control Board already had policies that prevent negative water quality impacts.

Tom Zuckerman, Central Delta Water Agency, commented that after listening to the discussion of the water quality policy, he was confused. Mr. Zuckerman stated he thought the objectives were good but didn't understand what the Council was proposing and questioned what the Council could add to the State Water Resources Control Board's processes that are already in place. Mr. Zuckerman gave several examples of pollutants that the users have little control over and that trying to enforce point and nonpoint discharge was going to be difficult and time consuming. He questioned how it would be achieved.

At the conclusion of public comment for WQ P1, the Council recessed for lunch at 1:10 p.m. and resumed the meeting at 2:12 p.m.

Mr. Grindstaff handed out draft language for a recommendation for water quality based on the discussion that had taken place. Mr. Grindstaff felt the new recommendation accomplished the objectives the Council was looking for, namely shining a spotlight on water quality, asking if it would include water quality impacts, and putting the evaluation of impacts of water quality restoration in the State Board or Regional Board's arena. Mr. Grindstaff's recommendation follows:

"Water quality in the Delta should be maintained at a level that supports and enhances beneficial uses identified in the applicable State Water Resources Control Board (SWRCB) or Regional Water Quality Control Board (RWQCB) water quality plans. Proposed actions should identify significant impacts to water quality. The SWRCB or RWQCBs should evaluate and, if appropriate, propose special water quality protections for ecosystem restoration opportunity areas, areas near municipal water supply intakes, or other areas of the Delta where new or increased discharges of pollutants could impact beneficial uses."

Following the Council's review and discussion of the recommendation provided by Mr. Grindstaff that replaced WQ P1, staff requested approval from the Council to use Mr. Grindstaff's proposed recommendation. Chair Isenberg asked if there were any further questions or comments and as there were none, it was moved (Gray) and seconded (Fiorini) to direct staff to replace WQ P1 with the new water quality recommendation. A vote was taken (7/0: Nordhoff, Johnston, Gray, Marcus, Fiorini, Isenberg, Nottoli) and the motion adopted.